



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information**, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: August 8, 2016

Date of Meeting: August 18, 2016

Submitted by: Eileen Cabanel, Town Manager

Department:

Time Required: 5-10 minutes

Speakers: Eileen Cabanel

Background Info.

Supplied:

Yes: ☒ No: ☐

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:

☐

Recognition/Resignation/

☐

Public Hearing:

☐

Retirement:

☐

New Business:

☒

Old Business:

☐

Nonpublic:

☐

Consent Agenda:

☐

Other:

☐

TITLE OF ITEM

Repurchase of a Tax Deeded Property - Deadline Extension Request

DESCRIPTION OF ITEM

The prior owner of a recently tax deeded property, 6A-2/144, is requesting that the Town Council approve an extension of the deadline date for repurchase of the property (RSA 80:89) from September 4, 2016 to September 15, 2016. The former owner has agreed to pay all amounts required by law, including back taxes, interests, penalties and costs, as defined by RSA 80:90. The Council has the authority to extend the deadline in accordance with 80:80 III and Article 66-1 of the Merrimack Town Code.

REFERENCE (IF KNOWN)

RSA: 80:89, 80:90:
80:91 & 80:80 Warrant Article:
III
Charter Article: 66-1 Town Meeting:
Other: N/A

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:

☐

Grant Requirements:

☐

Easel:

☐

Joint Meeting:

☐

Special Seating:

☐

Other:

☐

Laptop:

☐

None:

☐

CONTACT INFORMATION

Name:

Eileen Cabanel

Address

6 Baboosic Lake Road

7 Richards Road – Timeline –

May 4, 2016 7 Richards Road was deeded to Town by the Tax Collector. See attached deed.

It should be noted that throughout this entire process, the prior owner, Janet D'Alessio has shown interest in repurchasing the property if she could find a way to come up with the money to do so. She indicated that she was upset that she did not pay her taxes on time and lost the property in the first place.

She has kept in regular contact with the Town to make sure she does not miss any deadlines that would cause her to forfeit her right to repurchase. Below, you will find a timeline of events since the property was deeded to the Town for non-payment of 2013 taxes.

May 9, 2016 The current occupant of the property (not the prior owner) was served an eviction notice in hand by a Merrimack Police Officer from the Town Manager ordering them to **vacate the property by June 10, 2016.**

The Town has been in the process of evicting the current occupant who is not the prior owner. The Town will be issued a Writ of Possession on September 6, 2016 and then the Town can take possession of the property and secure it.

The current repurchase deadline is September 4, 2016.

If the prior owner repurchases the property prior to the Writ of Possession, the eviction process will need to be started over from the beginning by the Prior Owner, who has indicated she does not want the Tenant to remain on the property.

June 9, 2016 The Town Council voted to dispose of the property by public auction.

August 4, 2016 The Town received the required letter from the prior owner, Janet D'Alessio, dated July 29, 2016, notifying the Town of her intent and ability to **repurchase the property within the required deadline** of 30-days after she notifies the town of her intent to repurchase - **September 4, 2016.** See attached letter.

August 5, 2016 The Town received a letter from the prior owner, Janet D'Alessio, **requesting that the Town Council grant an extension of the deadline for repurchase until September 15, 2016,** as a result of the pending Writ of Possession and eviction on September 6th. See attached letter.

Carmela O'Laughlin

564
Merrimack Tax

FEES:	1044
SURCHARGE:	2-
CASH:	—

TAX COLLECTOR'S DEED KNOWN ALL MEN BY THESE PRESENTS

That I, Diane Trippett, Tax Collector for the Town of Merrimack, in the County of Hillsborough and the State of New Hampshire, for the year 2013 by the authority in me vested by the laws of the State, and for consideration received by the Town of Merrimack, located at Town Clerk/Tax Collector, 6 Baboosic Lake Road, Merrimack, NH 03054, do hereby sell and convey to the Town of Merrimack, a certain tract or parcel of land situated in the Town of Merrimack, New Hampshire aforesaid, taxed by the Selectmen/Assessors in 2013 to:

D'ALESSIO JANET

and described in the invoice books as:

Map: 006A-2

Lot: 000144

Sublot: 000000

Located At 7 RICHARDS RD

Consisting of 0.230 Acres of Land, Including Any Buildings Thereon, as Recorded at the Registry of Deeds in Book 7964, Page 413.

The deed is the result of the tax lien execution held at the Tax Collector's Office in the above stated Town, in the State of New Hampshire on 04/08/2016, to have and to hold said Premises, with the appurtenances, to said Town's successors/heirs and assigns forever. And I hereby covenant with said Town, that in making this conveyance I have in all things complied with the law, and that I have good right, so far as that right may depend upon the regularity of my own proceedings, to sell and convey the same in manner aforesaid.

In witness whereof, I have hereunto set my hand and seal, the 4 day of May in the year of our Lord 2016.

Diane Trippett

Diane Trippett

Tax Collector, Merrimack

State of New Hampshire, County of Hillsborough, On May 4, 2016

Diane Trippett, the above named, personally appearing and acknowledged the foregoing instrument to be his/her voluntary act and deed. Before me

Brenda S DuLong

Brenda S DuLong

, Notary / J.P.
My Commission expires: _____

BRENDA S. DULONG, Notary Public
My Commission Expires March 7, 2017



RECEIVED

AUG 05 2016

TOWN OF MERRIMAC
TOWN MANAGER'S OFFICE

August 2, 2016

To Whom It May Concern,

Please accept this as my formal request to extend my repurchase date to September 15. This will allow the town enough time to have the writ executed for the evicting proceedings against Joette Ducharme and whomever else is living there. I am still able and willing to repurchase the property, but considering that I am paying for the eviction in my repurchase price it is sensible to allow the town time to complete the process.

Thank you,


Janet D'Alessio

July 29, 2016

RECEIVED

AUG 04 2016

TOWN OF MERRIMACK
TOWN MANAGER'S OFFICE

Town of Merrimack

6 Baboosic Lake Road

Merrimack, NH 03054

RE: 7 Richards Road

To Whom It May Concern,

Please accept this as my formal intent to repurchase the property located at 7 Richard Rd. I am ready, able and willing to pay all back taxes, interest, costs and penalties required to repurchase the property.

I understand that payment in full must be received within 30 days of your receipt of this letter.

Sincerely,


Janet D'Alessio

§ 80:89. [Effective 7/2/2016] Notice to Former Owner and Opportunity for Repurchase.

New Hampshire Statutes

Title 5. TAXATION

Chapter 80. COLLECTION OF TAXES

Real Estate Tax Liens

Current through Chapter 309 of the 2016 Legislative Session

§ 80:89. [Effective 7/2/2016] Notice to Former Owner and Opportunity for Repurchase

- I. At least 90 days prior to the offering for sale by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipal governing body or its designee shall send notice by certified mail, address service requested, return receipt requested, to the last known post office address of the owner of the property at the time of the tax deed, if known, or to the person to whom notice of the impending tax deed was given under RSA 80:77. The notice shall set forth the terms of the offering and the right of the former owner or owners to repurchase the property, as set forth in paragraph II. Copies of any such notice shall also be sent by certified mail, return receipt requested, to any mortgagee to whom notice of the impending tax deed was sent under RSA 80:77-a. For any notice sent pursuant to this paragraph, \$10 may be added to the municipality's "costs" as defined in RSA 80:90. In this section, an "offering for sale" means the authorization by the municipality's governing body to its designee to sell the property.
- II. Within 30 days after the notice required by paragraph I, or if no such notice is received, at any time within 3 years after the date of recording the tax deed, **any former owner of the property may give notice by certified mail, return receipt requested, of intent to repurchase the property from the municipality, and stating that such owner is ready, willing, and able to pay all back taxes, interest, costs and penalty, as defined in RSA 80:90, except that if the property is the former owner's principal residence, or was the former owner's principal residence at the time of execution of the tax deed under RSA 80:76, the additional penalty under RSA 80:90, I(f) shall not apply. If all such back taxes, interest, costs and penalty have not been actually tendered within 30 days of such notice of intent to repurchase, the municipality may proceed with its offering and dispose of the property without any interest by the former owner.**
- III. The deed from the municipality upon such repurchase shall convey the municipality's interest in the property, or such portion as has not been previously disposed of by the municipality, to all record former owners in the same proportional undivided interests as the former owners of record.

repurchase
deadline
↓

- IV. The former owners' title upon repurchase shall be subject to any liens of record against the property as of the time of the tax deed to the municipality, and subject to any leases, easements, or other encumbrances as may have been granted or placed on the property by the municipality. In the case of multiple former owners, any owner paying more than a proportional share of the purchase price to the municipality shall have a lien against the other owners for the amount of the excess paid.
- V. A notice of intent to repurchase under this section may also be filed by the holder of any recorded mortgage interest in the property which was unredeemed as of the date of the tax deed. Upon payment the property shall be deeded as provided in paragraph III, but the mortgagee shall be entitled to add the amount paid to the municipality to the amount due under the mortgage.
- VI. Conveyances to a former owner under this section shall not be subject to the real estate transfer tax under RSA 78-B.
- VII. The duty of the municipality to notify former owners and to distribute proceeds pursuant to RSA 80:88, and the former owners' right of repurchase under this section shall terminate 3 years after the date of recording of the deed.

Cite as RSA 80:89

History. Amended by 2016, 37: 1, eff. 7/2/2016.

Note:

1998, 238:2, eff. June 25, 1998. 2007, 184:2, 3, eff. Aug. 17, 2007.

Note: *This section is set out twice. See also NHRS 80:89 , effective until 7/2/2016.*

August 9, 2016

Sharon Marunicz
HR Coordinator
Town of Merrimack
6 Baboosic Lake Road
Merrimack, NH 03054

RE: D'Alessio Repurchase Extension Request

Dear Sharon:

In response to Ms. D'Alessio's August 2, 2016 request to extend the deadline for her to repurchase her property which was tax deeded to the Town, the Council has the authority to grant this extension pursuant to RSA 80:80, RSA 80:91 and Town Code §66-1. These laws provide as follows, with the relevant sections underlined:

RSA 80:80:

"III. The selectmen may, by a specific article in the town warrant, or the mayor, by ordinance, may be authorized to dispose of a lien or tax deeded property in a manner than otherwise provided in this section, as justice may require."

"VI. For purposes of this section, the authority to dispose of the property 'as justice may require' shall include the power of the selectmen or mayor to convey the property to a former owner, or to a third party for benefit of a former owner, upon such reasonable terms as may be agreed to in writing[.]. . . This paragraph shall not be construed to obligate any municipality to make any such conveyance or agreement."

RSA 80:91:

"Nothing in RSA 80:88 or 80:89 shall be construed to preclude a municipality from granting more favorable terms to a former owner pursuant to RSA 80:80, VI."

The Town Code adopted the language required under RSA 80:80 in §66-1:

§ 66-1 Transfer of tax lien.

Pursuant to RSA 80:80, the Town Council is authorized to retain for public use or to sell, either by private sale to the previous owner from whom title was obtained through the Tax Collector's deed or public auction, and for such price and upon such terms as in its judgment may seem best, any real estate or interest therein to which the Town has obtained or shall obtain title by Tax Collector's deed for the nonpayment of taxes, and further, during the period when title to said property shall be held by the Town, the Town Council is given authority to rent, use or administer the same as in its judgment may seem best.

Sincerely,
/s/ Keriann Roman
Keriann Roman

TITLE V

TAXATION

CHAPTER 80

COLLECTION OF TAXES

Real Estate Tax Liens

Section 80:80

80:80 Transfer of Tax Lien. –

I. No transfer of any tax lien upon real estate acquired by a town or city as a result of the execution of the real estate tax lien by the tax collector for nonpayment of taxes thereon shall be made to any person by the municipality during the 2-year period allowed for redemption, nor shall title to any real estate taken by a town or city in default of redemption be conveyed to any person, unless the town, by majority vote at the annual meeting, or city council by vote, shall authorize the selectmen or the mayor to transfer such lien or to convey such property by deed.

II. If the selectmen or mayor are so authorized to convey such property by deed, either a public auction shall be held, or the property may be sold by advertised sealed bids. The selectmen or mayor shall have the power to establish a minimum amount for which the property is to be sold and the terms and conditions of the sale.

II-a. If the selectmen or mayor are authorized to transfer such liens during the 2-year redemption period, either a public auction shall be held, or the liens may be sold by advertised sealed bids. The selectmen or mayor may establish minimum bids, and may set the terms and conditions of the sale. Such liens may be sold singly or in combination, but no fractional interest in any lien shall be sold. Such transfer shall not affect the right of the owner or others with a legal interest in the land to redeem the tax lien pursuant to RSA 80:69, or make partial payments in redemption pursuant to RSA 80:71, but the transferee shall become the lienholder for purposes of RSA 80:72 and 80:76.

Town code 66-1

III. The selectmen may, by a specific article in the town warrant, or the mayor, by ordinance, may be authorized to dispose of a lien or tax deeded property in a manner than otherwise provided in this section, as justice may require.

IV. Such authority to transfer or to sell shall continue in effect for one year from the date of the town meeting or action by the city or town council provided, however, that the authority to transfer tax liens, or to sell real estate acquired in default of redemption, or to vary the manner of such sale or transfer as justice may require, may be granted for an indefinite period, in which case the warrant article or vote granting such authority shall use the words "indefinitely, until rescinded" or similar language.

V. Towns and cities may retain and hold for public uses real property the title to which has been acquired by them by tax collector's deed, upon vote of the town meeting or city council approving the same.

VI. For purposes of this section, the authority to dispose of the property "as justice may require" shall include the power of the selectmen or mayor to convey the property to a former owner, or to a third party for benefit of a former owner, upon such reasonable terms as may be agreed to in writing, including the authority of the municipality to retain a mortgage interest in the property, or to reimpose its tax lien, contingent upon an agreed payment schedule, which need not necessarily reflect any prior redemption amount. Any such agreement shall be recorded in the registry of deeds. This paragraph shall not be construed to obligate any municipality to make any such conveyance or agreement.

Source. 1987, 322:1. 1992, 173:3, 4. 1993, 176:10. 1997, 266:4, eff. Jan. 1, 1998.

TITLE V TAXATION

CHAPTER 80 COLLECTION OF TAXES

Real Estate Tax Liens

Section 80:91

80:91 Liability and Obligations Limited. – With respect to actions of a municipality under RSA 80:88 and 80:89, if the municipality has complied with the provisions of this chapter it shall not have any liability whatsoever to any former owner or lienholder in connection with its management of the property or for the amount of consideration received upon disposition of the property. After the execution of a tax deed, the municipality may treat the property in all respects as the fee owner thereof, including leasing or encumbering all or any portion of the property, without any accountability to former owners, except that the proceeds of any sale must be accounted for as provided in RSA 80:88. Nothing in this chapter shall obligate a municipality to dispose of property acquired by tax deed, except as provided in RSA 80:89. Nothing in RSA 80:88 or 80:89 shall be construed to preclude a municipality from granting more favorable terms to a former owner pursuant to RSA 80:80, VI.

Source. 1998, 238:2, eff. June 25, 1998.

Town of Merrimack, NH
Monday, August 8, 2016

Chapter 66. Town Council

[HISTORY: Adopted by the Town of Merrimack as indicated in article histories. Amendments noted where applicable.]

Article I. Tax Title Deed Properties

[Adopted 5-16-1991 ATM by Art. 26; amended by Town Council 11-5-2009; 1-26-2012]

§ 66-1. Transfer of tax lien.

Pursuant to RSA 80:80, the Town Council is authorized to retain for public use or to sell, either by private sale to the previous owner from whom title was obtained through the Tax Collector's deed or public auction, and for such price and upon such terms as in its judgment may seem best, any real estate or interest therein to which the Town has obtained or shall obtain title by Tax Collector's deed for the nonpayment of taxes, and further, during the period when title to said property shall be held by the Town, the Town Council is given authority to rent, use or administer the same as in its judgment may seem best.

§ 80:90. [Effective 7/2/2016] Definitions.

- definition of
"back taxes, interest,
costs + penalty"

New Hampshire Statutes

Title 5. TAXATION

Chapter 80. COLLECTION OF TAXES

Real Estate Tax Liens

Current through Chapter 309 of the 2016 Legislative Session

§ 80:90. [Effective 7/2/2016] Definitions

- I. For purposes of RSA 80:88 and 80:89, the phrase "back taxes, interest, costs and penalty" shall include all of the following:
 - (a) All taxes assessed but unpaid as of the date of the tax deed, together with all taxes which would thereafter otherwise have been assessed against such property based on its valuation, but for its ownership by the municipality.
 - (b) All statutory interest actually accrued on all back taxes as of the date of the tax deed, together with all statutory interest which would otherwise thereafter have accrued on all taxes listed in subparagraph (a), but for the property's ownership by the municipality.
 - (c) All allowable statutory fees charged for notice and recording in connection with the tax collection process.
 - (d) All legal costs incurred by the municipality in connection with the property, including those connected with the municipality's sale or the former owner's repurchase.
 - (e) All incidental and consequential costs as are reasonably incurred or estimated to be incurred by the municipality in connection with its ownership and disposition of the property, including but not limited to insurance, maintenance, repairs or improvements, and marketing expenses.
 - (f) An additional penalty equal in amount to 10 percent of the assessed value of the property as of the date of the tax deed, adjusted by the equalization ratio for the year of the assessment.
- II. For purposes of RSA 80:88 and 80:89, "former owner" shall mean any person in whom title to the property, or partial interest therein, was vested at the time of the tax deed, and shall include any heir, successor, or assign of any former owner, provided, however, that any person to whom a former owner has attempted to convey or assign any interest, lien,

or expectancy in the property subsequent to the date of the tax deed shall not be deemed a former owner.

Cite as RSA 80:90

History. Amended by 2016, 37: 2, eff. 7/2/2016.

Note:

1998, 238:2, eff. June 25, 1998. 2007, 42:2, eff. July 20, 2007.

Note: *This section is set out twice. See also NHRS 80:90 , effective until 7/2/2016.*

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - District Division - Merrimack
Baboosic Lake Rd./PO Box 324
Merrimack NH 03054-0324

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

July 28, 2016

**TOWN OF MERRIMACK
6 BABOOSIC LAKE ROAD
MERRIMACK NH 03054**

Case Name: **Town of Merrimack v. Joette Ducharme**
Case Number: **457-2016-LT-00078**

Please find enclosed the order with regard to the above-referenced matter.

Lynn R. KillKelley
Clerk of Court

(367)

C: Joette Ducharme; Matthew R. Serge, ESQ; Keith A. Mathews, ESQ

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - District Division - Merrimack
Baboosic Lake Rd./PO Box 324
Merrimack NH 03054-0324

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

**LANDLORD/TENANT ACTION FOR OTHER THAN NON-PAYMENT OF RENT
JUDGMENT**

Case Name: **Town of Merrimack v. Joette Ducharme**
Case Number: **457-2016-LT-00078**

After a hearing on the merits, judgment is awarded to the tenant. Further, the court finds: ---

*that the plaintiff legally owns the property and the
eviction is for good cause as stated in the Notice
of Eviction*

- ☒ Writ of Possession will issue on the ^{24th}~~eight~~ calendar day from the date the notice of judgment is provided to the parties, unless the appealing party:
- A. Files a Notice of Intent to Appeal within seven days;
 - B. Completes a Supreme Court appeal within 30 days; and
 - C. If the appealing party is the tenant, pays to the plaintiff all rent becoming due from the date of the Notice of Intent to Appeal is filed with the Circuit Court.

SEE APPEAL INFORMATION ON PAGE TWO

Date

7/28/16

Signature of Judge

Michael Ryan
Michael Ryan

Printed Name of Judge

Notice of Judgment to parties:

☐ In Hand to parties on _____

☒ Mailed to parties on July 28, 2016

Writ of Possession to be issued on September 6, 2016

(45739)

Case Name: Town of Merrimack v. Joette Ducharme

Case Number: 457-2016-LT-00078

LANDLORD/TENANT ACTION FOR OTHER THAN NON-PAYMENT OF RENT - JUDGMENT

LANDLORD/TENANT ACTION FOR OTHER THAN NON-PAYMENT OF RENT

APPEAL INFORMATION

THE JUDGMENT IN A LANDLORD/TENANT ACTION FOR OTHER THAN NON-PAYMENT OF RENT MAY BE APPEALED ON QUESTIONS OF LAW TO THE SUPREME COURT BY EITHER PARTY. PLEASE NOTE THE FOLLOWING:

- A. Within seven calendar days of the date of this notice, the party appealing must file with the Circuit Court a NOTICE OF INTENT TO APPEAL TO THE SUPREME COURT (NHJB-2085-DP).
- B. If the tenant is the party appealing, the tenant shall pay into Circuit Court or the landlord as the court directs, all rents becoming due from the date the NOTICE OF INTENT TO APPEAL (NHJB-2085-DP) is filed with the Circuit Court.
- C. If the tenant is the appealing party and the duty to pay rent or a portion thereof is in dispute, the tenant shall, after the NOTICE OF INTENT TO APPEAL (NHJB-2085-DP) is filed with the District Division, pay to the District Division such portions of the rent in an amount directed by the court. During the time that the appeal is pending, this rent or portion thereof is payable as it becomes due. Such amounts shall be held by the court in escrow until a final decision is rendered.
- D. Within 30 days of the NOTICE OF JUDGMENT, the party appealing must file a NOTICE OF APPEAL with the Supreme Court.
- E. When the final decision on appeal is rendered by the Supreme Court, any escrowed monies paid into the Circuit Court shall be apportioned between the landlord and tenant based upon the finding of the rent actually due.

7 RICHARDS ROAD, Merrimack, NH

Assessed Value on Date of Tax Deed:	\$118,900
Equalization Rate:	94.4%
Adjusted Assessed Value:	\$125,953

Estimated Pay-off as of Sept. 15, 2016

Penalty: 10% of Adjusted Assessed Value:	\$12,595.34
Taxes and Interest Owed :	13,179.65
Sub Total :	<u>\$25,774.99</u>
Legal Fees and Other Costs as of 8/9/16:	2,567.61

Estimated Repurchase Price as of Sept. 15, <u>2016</u>	<u>\$28,342.60</u>
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ESTIMATED FIGURES AS OF 8/9/2016 - subject to change with additional attorney fees and other costs